

## ANALYSIS OF AMENDED BILL

Author: Sweeney Analyst: Gloria McConnell Bill Number: AB 1630  
Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 03/18/98  
Attorney: Janet Ballou Sponsor: \_\_\_\_\_

**SUBJECT:** Child Support Enforcement/State Agencies Report Names & SSNs of  
Contractors to Employment Development Department

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as  
introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as  
introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED \_\_\_\_\_ STILL APPLIES.

☒ OTHER - See comments below.

### SUMMARY

The bill, among other things, specifically would require the following persons or  
entities to register or report the following information to EDD for inclusion in  
its new employee registry (NER):

1. those receiving state loans or grants to register their social security number  
(SSN) and employer's name;
2. each state agency, which would include FTB, to report the name and SSN of each  
contractor that contracts with the state; and
3. each contractor who contracts with the state to register the name and SSN of  
each person employed by the contractor and employed by a subcontractor of the  
contractor who will perform work on a state contract.

This analysis discusses only those provisions that affect the Franchise Tax  
Board.

### EFFECTIVE DATE

This bill would be effective and operative January 1, 1999.

### LEGISLATIVE HISTORY

AB 1832 (Cardenas, 1998).

DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_ STATE MANDATE

\_\_\_ GOVERNOR'S APPOINTMENT

Board Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
\_\_\_ X \_\_\_ PENDING

Agency Secretary Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
DEFER TO \_\_\_\_\_

**GOVERNOR'S OFFICE USE**

Position Approved \_\_\_\_\_  
Position Disapproved \_\_\_\_\_  
Position Noted \_\_\_\_\_

Department/Legislative Director Date  
G. Alan Hunter 3/30/98

Agency Secretary Date

By: Date:

#### PROGRAM HISTORY/BACKGROUND

Federal law requires each state to have a single agency responsible for enforcing child support, but permits delegation of specific tasks to local levels. The Department of Social Services (DSS) is designated as the California state agency. By state law, the county district attorneys (DAs) are delegated responsibility for enforcing child support, which includes collecting current payments and delinquencies.

In 1993 (Speier, AB 3589; Stats. 92, Ch. 1223), FTB began collecting delinquent child support through a pilot project in which DAs in six counties could voluntarily refer their delinquent child support accounts to FTB for collection as though they were delinquent personal income taxes. In 1995, the program was expanded to include voluntary referral from all counties (Speier, AB 923; Stats. 94, Ch. 906). In 1998 (AB 1395, Escutia; Stats. 97, Ch. 614), the program again was expanded in that DAs, except for San Diego County, are required to refer all child support obligations that they are responsible for enforcing that are 91 days or more delinquent to FTB for collection as though they are delinquent. Additionally, DAs can voluntarily refer those child support delinquencies that are less than 91 days delinquent to FTB for collection as though they are delinquent personal income taxes. No collection action can be taken for certain delinquencies, (e.g., court orders or payment arrangements), in which case the account is not referred or is withdrawn from FTB. To collect delinquent child support, FTB may use any of its tax collection remedies and information sources.

Additionally, beginning in 1998 (AB 573, Kuehl; Stats. 97, Ch. 599), DAs are authorized to refer current child support orders to FTB for collection, in which case FTB uses tax information to issue wage assignment orders.

Under current law and practice, FTB uses an automated collection system to garnish wages and attach bank accounts. Typically, FTB uses SSNs to search tax records to locate assets of the debtor. FTB uses tax information returns filed by banks, other third parties and Employment Development Department employer/employee information to issue withholding orders to attach assets for child support collection purposes. Orders to withhold (OTWs) are used to attach any amounts immediately due and payable to the tax debtor or obligor, i.e., bank accounts, cash or cash equivalents. Earnings withholding orders are used to garnish wages or, in the case of child support collections, payments that are due or to become due, e.g. contractual payments. An earnings withholding order (EWO) for delinquent child support generally attaches 50% of the payment due the obligor.

Under the Unemployment Insurance Code (UIC), employers are required on a quarterly basis to report to EDD information on its employees, which includes each employee's SSN. EDD's employer/employee information is available to FTB shortly after the end of each quarter. Additionally, certain employers are required to report within 30 days of employment, the SSN and name of all new employees. However, by federal mandate and state law, operative July 1, 1998, all employers will be required to report the employee's name and SSN to EDD not later than 20 days after employment, or twice a month if reporting electronically. When EDD records, including the new employee registry (NER), are matched against FTB's records and an employee is identified as a tax debtor or child support obligor, FTB may issue a withholding order against the earnings of the tax debtor and or delinquent obligor.

In addition, trades or businesses that pay \$600 or more for personal services to other than an employee are required to file an information return (1099MISC) at the end of the calendar year, reporting the nonemployee compensation to the Internal Revenue Service (IRS) and/or FTB. This information also is used to issue withholding orders. For child support collections, whether the compensation is wages or payments for personal services, the compensation would be considered "earnings." As such, a withholding order would be issued and 50% of the individual's disposable earnings would be subject to garnishment.

A withholding order attaches to assets of the debtor. In the case of corporations, partnerships, limited liability companies and other formally organized entities, the assets of the entity cannot be attached for the debt of a partner or "owner." If a person is an officer of a corporation, the person is considered an employee for laws administered by EDD and would be included in EDD's current employer/employee records.

#### SPECIFIC FINDINGS

**Currently**, FTB contracts for various services, in accordance with requirements outlined in the State Administrative Manual and rules of the Department of General Services. FTB additionally requires that the contracting party agree to comply with the laws administered by FTB, be current in filing and payment of any taxes, and be in good standing.

**Under this bill**, FTB would be required to report to EDD for inclusion in the NER, the name and SSN of each contractor with which it contracts.

#### Implementation Considerations

This bill specifically affects **FTB as a contracting state agency** as it would be required to report the names and SSN of each contractor with which it contracts. Additionally, this analysis presumes that the information being reported to EDD would be used by FTB for its child support collection program because of FTB's current practice of using EDD records for this purpose. The following implementation considerations are identified with respect to the reporting requirement:

- Because this bill would be effective on January 1, 1999, it is presumed that the reporting requirement is not intended to apply to contracts in existence on or before January 1, 1999. To avoid confusion, however, the bill should expressly provide that the act would apply only to contracts first executed on or after January 1, 1999.
- The SSNs and name must be reported on all contracts. The majority of FTB's contracts are with corporations, and certain major contracts are with partnerships. However, because only individuals owe child support and have SSNs, it is presumed that the only contracts that would be subject to the bill's reporting requirements are those with sole proprietors. However, this should be clarified.
- The implementation plan would depend upon whether EDD would require the reporting to be through a magnetic media process, or whether paper would suffice if the reporting were minimal.

To allow FTB to effectively use the reporting requirements of this bill to enhance its **child support collection program**, the bill should require the reporting agency or contractor to report and EDD to capture the name and address of the agency to which the withholding order should be issued, if other than the reporting agency. Additionally, to maximize the enhancement to FTB's child support collection program and limit unnecessary reporting to EDD, the following implementation considerations are identified:

- The bill would require every person receiving a state loan or grant to report her or her SSN and employer's name. It is unclear the purpose for this reporting. Under the UIC, the employer would be reporting this person as an employee. If this person were both obligor and employee, FTB would issue a withholding order under current law, so it doesn't appear that this provision would enhance FTB's child support collection program.
- For FTB to issue a withholding order on a contractual payment, only the payments due and payable to independent contractors, who are sole proprietors, would be subject to levy. Therefore, the author may want to limit the reporting to only those contractors.
- The bill requires contractor to report employees. Employees should be reported currently to EDD under the UIC. Therefore, the author may want to limit this reporting requirement to those employees of the contractor and subcontractor that are not currently reported under the UIC. Additionally, perhaps the bill should be amended to require that contractors report the names and SSNs of their subcontractors who will perform work on a state contract and who are sole proprietors.

## FISCAL IMPACT

### Departmental Costs

Until the implementation considerations are resolved, departmental costs cannot be determined.

### Collection Estimate

Based on the discussion below, accelerated collections of child support on accounts referred to FTB are estimated to be approximately \$500,000 annually.

This analysis does not consider the possible changes in employment, personal income or gross product that could result from this bill.

### Collection Estimate Discussion

The collection impact of this bill on **child support collection** would (1) depend on the number of delinquent child support obligors who have money due from state contracts, (2) depend upon the contract payment amount, (3) depend upon the amount of child support owed, and (4) presume that FTB would issue a withholding order for child support to the reporting agency to attach 50% of each payment to become due on the contract reported to EDD.

Collection estimates were based on the results of the FTB's current child support collections program, previous estimates, and available information from 1099 non-employee compensation reporting under current law. According to these data and sources, there annually are an estimated \$13 million in payments to independent contractors who are delinquent child support obligors. If as much as 10% of the total payments is attributable to state contracts, state payments would be approximately \$1.3 million.

Finally, of the payments by state government, it is estimated that approximately 50% of the amount would satisfy the obligors' delinquent child support. This yields approximately \$650,000 in potential collections. Assuming that 75% of the potential collections could be satisfied with a withholding order for child support, the estimated impact of this bill would be approximately \$500,000 annually in accelerated collections after implementation ( $\$650,000 \times 75\%$ ).

#### BOARD POSITION

Pending.